IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7215 OF 2004

Maharashtra State Textile)
Corporation Limited, Mumbai,)
Unit - Narsinggirji Mills,)
Station Road, Solapur.). Petitioner.

Vs.

Suryakant Bhagwanrao Ingle,)
Age 48 years, resident of Kunj,)
Narsinggirji Co-operative Housing)
Society at majrewadi,)
Post Tikekarwadi, Solapur.)..Respondent

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Shri A.Y.Sakhare, Senior Counsel with Smt.Varsha Palav and Shri S.S.Aradhye for the petitioner.

Shri Sahasrabuddhe for Shri G.S.Godbole for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 7th OCTOBER, 2004.

ORAL JUDGMENT :

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the order dated 15th July, 2004 passed by the Industrial Court, Solapur, in Revision (BIR) Application No.1 of 2002 dismissing the

revision application and refusing to interfere with the order dated 11th April, 2002 passed by the Labour Court at Solapur directing the petitioner to pay to the respondent subsistence allowance as provided in the Standing Order No.25(5A) from 18th September, 2001.

3. Few facts relevant for the decision in the matter are that, the respondent having committed misconduct on 18th March, 1989, a charge sheet was served upon him on 24th March, 1989 and on receipt of the inquiry report dated 11th September, 1989, the order of dismissal of the respondent from the service of the petitioner came to be issued on 18th September, 1989. The respondent being aggrieved by the said dismissal order approached the Labour Court by filing the complaint BIR No.7 of 1990 on 6th March, 1990. The same was contested by the petitioner by filing the written statement on 16th October 1992. By the order dated 9th February, 1998, the Labour Court held that the inquiry conducted by the petitioner was not just and proper and granted liberty to the petitioner to adduce fresh evidence in support of the charges levelled against the respondent and to justify the action taken by it. The appeal filed against the said order was dismissed by the Industrial Court on 18th

September, 2001 confirming the order of the Labour Court. An application was filed by the respondent on 11th April, 2002 claiming subsistence allowance, which was objected by the petitioner. However, the Labour Court by its order dated 11th April, 2002 allowed the said application and directed the petitioner to pay subsistence allowance to the respondent. The said order was challenged in revision application No.1 of 2002 and during the pendency and final disposal of the said revision application, the Industrial Court on 3rd May, 2002 granted stay to the order dated 11th April, 2002 passed by the Labour Court. However, on final hearing of the matter, the Industrial Court by its impugned order dated 15th July, 2004 dismissed the said revision application. Hence the present petition.

4. The respondent filed affidavit in reply contending that there was inordinate delay in dismissing the complaint filed by the respondent and inspite of the fact that the inquiry conducted in the matter having been held to be not fair and proper, the matter has been dragged for a number of years on account of failure on the part of the petitioner to adduce evidence in time, and therefore, the impugned order does not warrant interference in writ

jurisdiction. It has also been stated in the affidavit-in-reply that by the order dated 20th July, 2004 passed in Writ Petition No.20902 of 2004 by the learned Single Judge of this Court, the Labour Court had already been directed to dispose of the main complaint within six months from the date of the said order of this Court, i.e. 20th July, 2004.

5. The learned advocate for the petitioner, while challenging the impugned orders, has submitted that the Courts below erred in referring to the Standing Order No.25(5A) applicable to the parties to the proceedings when in the facts and circumstances of the case, there was no scope for the applicability of the said standing order to justify the claim of subsistence allowance. Further the order of dismissal of the respondent is subsisting and is yet to be interfered with by the Labour Court by the procedure known to law. Besides, the Courts below erred in misreading the decision of the Gujarat High Court in the matter of **Gujarat Bank Workers Union v.Chairman/Manager, Bharat Co-operative Bank Ltd. Baroda,** reported in 1996 II CLR 761 inasmuch as that the said decision nowhere lays down the law to the effect that moment the inquiry is held to be vitiated and the employer is granted liberty to lead fresh

evidence in support of the charges and to justify the action taken against the employee, that the employee can claim subsistence allowance as a matter of course. Further placing reliance in the decisions of the Apex Court in **Punjab Dairy Development Corporation Limited v. Kala Singh etc.,** reported in 1997 II CLR 385 and **Kalyani (P.H.) v. Air France, Calcutta,** reported in 1963 I LLJ 679, it is submitted that it is well settled law that even though the inquiry is held to be vitiated and the employer is allowed to lead further evidence in support of the charges and to justify the action taken against the employee, once the Labour Court upholds the disciplinary action taken against the employee and the order of dismissal passed pursuant to thereto, such an order of the Court would relate back to the date of original order of dismissal passed by the employer/ management and considering the same, there cannot be any scope for direction to pay subsistence allowance merely because the inquiry is held to be vitiated and further the liberty is granted to the employer to adduce evidence in support of the charges and to justify the action taken against the employee and when the complaint is pending for final decision of the Labour Court.

6. The learned advocate for the respondent, on

the other hand, has submitted that even assuming that the Labour Court is not empowered to order payment of subsistence allowance as such, in the facts and circumstances of the case which disclose that the management had been successfully able to drag the matter for number of years on account of its failure to lead evidence in time in support of the charges which were levelled against the respondent and the action taken against the respondent, and therefore this is not a fit case to exercise the writ jurisdiction. The Labour Court has directed the payment to be made as the subsistence allowance, however, considering the fact that the respondent had been out of employment for a period of last 15 years, it should be construed as a direction for payment to the respondent on humanitarian ground. Attention is also drawn to Section 119D of the Bombay Industrial Relations Act, 1946 to contend that the Labour Court has jurisdiction to pass such interim orders as it may consider just and proper, and considering the same, no fault can be found with the order passed by the Labour Court in the facts and circumstances of the case, and it could be construed to have been passed under the said provisions of law.

7. At the outset, it must be noted that the

decision of the Gujarat High Court, as rightly submitted by the learned advocate for the petitioner, was totally misread by the Industrial Court as the said decision nowhere discloses the proposition of law on the point of entitlement of the employee to claim subsistence allowance during the pendency of the proceedings merely because the Labour Court by the interim order holds that the inquiry conducted by the employer was not just and proper and therefore allows the employer to establish the charges and the action taken against the employee by leading further evidence. Indeed, there is no such proposition of law laid down by the said decision. Besides, the judgment in the **Gujarat Bank Workers Union's case (supra)** clearly reveals that the same was passed in the peculiar facts and circumstances of that case.

8. In **Punjab Dairy Development Corporation's case (supra),** the Apex Court, on reference being made to decide the correctness of the decision of the Apex Court in **Desh Raj Gupta v. Industrial Tribunal, IV, U.P. & Anr.** Jt 1990 (4) SC 403 = (1991) 1 SCC 249, after referring to the judgment of the constitutional bench in **P.H.Kalyani's case (supra)** held that "on the Labour Court's recording a finding that the domestic enquiry was defective and giving opportunity to adduce

the evidence by the Management and the workman and recording of the finding that the dismissal by the management was valid, it would relate back to the date of the original dismissal and not from the date of the judgment of the Labour Court."

9. In the Constitutional Bench's decision in **P.H.Kalyani's case (supra),** it was held that in the matter arising out of the application for approval under the proviso to 33(2)(b) of the Industrial Disputes Act, 1947 and the complaint having preferred under Section 33A of the Industrial Disputes Act on the same day by the concerned workman and the Labour Court considering the entire evidence adduced before it and the finding that the misconduct alleged against the workman was fully made out while rejecting the plea of defects in the domestic inquiry, the claim for wages upto the date of order on the approval petition was negatived on the ground that in such cases if the approval is granted it would relate back to the date of dismissal. It was specifically ruled that the Labour Court on appraisal of evidence adduced before it having found the dismissal to be justified, its approval of the order of dismissal made by the employer even in a defective enquiry would still relate back to the date when the order of dismissal

was made.

10. It is therefore clear that any order passed by the Labour Court confirming the order of dismissal passed against the employee by the employer in a complaint initiated by the concerned employee would relate back to the date of dismissal of such order passed by the employer, and therefore, the same would be effective for all the purposes from the date of the order of dismissal passed by the employer. Considering the same, the contention, that there could be no occasion for grant of any subsistence allowance during the pendency of the complaint before the Labour Court irrespective of prima facie finding of the Labour Court that the inquiry was not just and proper, cannot be found fault with. Once it is apparent that the service of an employee is terminated by passing an order of dismissal merely because the employee approaches the Labour Court making a grievance about the illegality in the inquiry or the decision being illegal, that by itself would not render the order of dismissal ineffective. Till and until such an order is set aside by the procedure known to law by the competent authority, such order will remain in force. In other words, the effect of such order would be that the relationship of employer-employee would stand

snapped, and in those circumstances, question of directing payment of subsistence allowance to such person cannot arise. This being abundantly clear, the learned advocate for the petitioner is justified in contending that the Labour Court's direction to the petitioner to pay subsistence allowance to the respondent cannot be sustained.

11. Section 119D of the Bombay Industrial Relations Act, 1946 provides that in any proceeding under the said Act before the Industrial Court or a Labour Court, or a Wage Board, such Court may pass interim orders as it may consider just and proper. Undoubtedly, this provision gives authority and power to the Industrial Court as well as the Labour Court to pass interim order as it may consider just and proper, however, such authority cannot empower the Court to pass any order contrary to the provisions of law. Once it is clear that the person whose services are terminated, ceases to be the employee of the person or the firm where he was employed till his services were terminated, such person cannot claim subsistence allowance during the pendency of the complaint, needless to say that the Industrial Court or the Labour Court by taking resort of the provisions of Section 119D of the said Act would not be entitled to

grant any such relief. Hence, the contention of the learned advocate for the respondent that the impugned order should be construed to have been passed under Section 119D of the said Act and therefore would not warrant interference in writ jurisdiction is devoid of substance. Once it is shown that the order has been passed in excess of jurisdiction and without any right in favour of the respondent to claim the relief granted, certainly it would be a fit case for interference in writ jurisdiction under Article 227 of the Constitution of India.

12. It was sought to be contended on behalf of the respondent that the matter has been dragged for number of years on account of failure on the part of the petitioner to lead evidence in support of the charges levelled against the respondent and to justify the action taken in the matter by the petitioner, and considering the same, the direction issued by the Labour Court should not be interfered with. Once it is apparent that the law does not authorise the Labour Court to issue the direction issued by it, merely because the matter had been pending for a number of years, that by itself cannot be a justification to sustain the illegal order passed by the Labour Court. Besides, undisputedly, in the Writ Petition No.20902

of 2004 this Court has directed the Labour Court to dispose of the complaint within a period of six months from the date of the order i.e. 20th July, 2004. Obviously, the Labour Court will have to dispose of the proceedings on or before 19th January, 2005. In other words, within next two/three months, the entire matter could be disposed of by the Labour Court. Undisputedly, during the pendency of the revision application, by an interim order dated 3rd May, 2002, the order passed by the Labour Court was stayed. In these circumstances, the arguments canvassed to justify the impugned order on alleged humanitarian ground also does not appeal to my mind in any manner.

13. In the circumstances, the impugned order cannot be sustained for the reasons stated above, and the petition therefore succeeds. The impugned order is hereby quashed and set aside and the rule is made absolute in terms of prayer clause 7(b). Needless to say that the Labour Court is required to dispose of the complaint on or before 19th January, 2005 and submit compliance report to this Court before 30th January, 2005. There shall be no order as to costs.